

REMARKS

Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the remarks herewith.

The September 18, 2006, Office Action required an election under 35 U.S.C. §121 from among three Groups. In response, Applicants provisionally elect the invention of Group I, claims 1-5, for further prosecution in this application. This election is made *with traverse* and without prejudice to Applicants' right to file divisional applications directed to the non-elected subject matter.

Applicants disagree with the Examiner's reasoning that restriction is required. Applicants respectfully urge that the Restriction Requirement does not establish that searching all the inventions would constitute an undue burden to the Patent Office. Moreover, Applicants urge that the Restriction Requirement is contrary to public policy. Accordingly, Applicants submit that the Restriction Requirement is improper and should be withdrawn or at least modified.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the Examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application "[i]f the search and examination of an entire application can be made without serious burden...even though it includes claims to distinct or independent inventions." *Id.*

Applicants urge that the Restriction Requirement, *inter alia*, does not meet the second of these criteria as the search for the groups overlap. The present claims clearly represent a web of knowledge and continuity of effort that merits examination in a single application, despite the Examiner's beliefs to the contrary. The invention provides for expression of a peptide in the form of a repeat peptide. The peptide is linked together by cleavage sites and, therefore, an originally expressed peptide comprises multiple copies of the desired antifusogenic peptide to be expressed. This construct is obtained as inclusion bodies. To obtain the desired antifusogenic peptide in monomeric form, the solubilized repeat peptide is cleaved into monomeric units. For the expression of said construct, a nucleic acid encoding the construct is needed. The preparation of inclusion bodies is an intermediate in this process.

Thus, as the nucleic acid is used in the process according to the invention, and the preparation of inclusion bodies is an intermediate to the process, all three Groups are related. Therefore, searching the claims of such similar Groups would not pose an undue burden on the Examiner.

Thus, restricting the claims in the manner suggested in the Restriction Requirement, and applying the Examiner's reasons for it, constitutes an undue burden to Applicants as well as to the public. The cost of prosecuting and maintaining additional patents is unreasonable in view of the fact that the three Groups are so closely related. Further, the public is inconvenienced as they will not know whether or not Applicants will file a divisional application to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

Accordingly, in view of the foregoing, reconsideration and withdrawal of the restriction requirement are respectfully requested. No further fee is required in connection the filing of this Amendment. If any additional fees are deemed necessary, authorization is given to charge the amount of any such fee to Deposit Account No. 08-2525.

Respectfully submitted,



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